

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1072 OF 2007

Nalsab Moulali Mulla ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.S.D.Dharmadhikari, Adv. for Applicant.
Mrs.A.S.Pai, APP, for the State.
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CORAM : SMT.V.K.TAHILRAMANI, J.

DATED : 10th April, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant-orig. accused No.2 and the learned APP for the State.

2. The applicant is seeking anticipatory bail in C.R.No.38 of 2007 of Sangli City Police Station, Sangli. The said case is mainly under Sections 406,420 r/w. 34 of IPC.

3. It is the prosecution case that one Aslam Nadaf (coacused) purchased six tyres from the complainant. The cost of the said tyres was Rs.65,580/-. Aslam Nadaf asked the complainant to

deliver these tyres at Tyre Puncture Shop, near Chetna Petroleum and on delivery he would pay for the said tyres. When the complainant sent his employee to the said shop, the said Aslam Nadaf met the employee, took the delivery of the tyres and handed over cheque for the said amount i.e.Rs.65,580/-. The said cheque was handed over by the employee to the complainant. At that time, the complainant stated to the employee that he should have brought cash amount and not cheque, thereupon the employee informed the complainant that while taking the delivery Aslam Nadaf informed him that he has spoken on telephone to the complainant and the complainant had stated that he could give cheque. Thereafter, the said cheque was dishonoured. The said cheque was drawn on the account of original accused No.3 i.e. Ajij Abaas Shaikh, who is absconding.

4. It is the prosecution case that Aslam Nadaf is one Sanjay Gidwani i.e. original accused No.1 and all the three accused including the applicant who is accused No.2 shared the common intention to cheat the complainant of Rs.65,580/-. As far as the present applicant is concerned, the role

attributed to him is that the tyres were delivered at his shop i.e. Tyre Puncture Shop. It is an admitted fact that the applicant was not present at the shop at that time, and only Aslam @ Sanjay Gidwani was present at the shop and received delivery of the said tyres and handed over the cheque. The prosecution is relying on two aspects so as to show the involvement of the present applicant i.e. the tyres were delivered at the shop of applicant and the telephone record shows that some calls were made by applicant and Sanjay Gidwani to one another. The prosecution also placed reliance on the statement of the complainant wherein the complainant has stated that when he made enquiries with the owner of the Tyre Puncture Shop i.e. the applicant, the applicant informed that the person who indulged in the present case was Sanjay Gidwani. The description given by the applicant of Sanjay Gidwani matches with that of Aslam Nadaf who had approached the complainant.

5. However, from the material on record, it is seen that the applicant himself had not received the delivery of the tyres nor did he hand over the

cheque in question. Looking to all these facts, I am inclined to grant anticipatory bail to the applicant.

6. In the event of arrest, the applicant - Nalsab Moulali Mulla to be released on bail in the sum of Rs.25,000/- with one or two sureties to make up the said amount. The applicant shall report to Sangli City Police Station, Sangli for a period of 15 days starting from 12.04.2007 from 11:00 a.m. to 2:00 p.m. and thereafter once in a week, till conclusion of the trial.

7. Application is disposed of accordingly.

(SMT.V.K.TAHILRAMANI, J.)